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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 DESTINY MONIQUE CLARK,) Case No.: 1:21-cv-1022 JLT
12 Plaintiff,)
13 v.) ORDER GRANTING PLAINTIFF’S MOTIONS
14 KILOLO KIJAKAZI,¹) TO PROCEED IN FORMA PAUPERIS
Acting Commissioner of Social Security,) (Docs. 2, 4)
15 Defendant.)
16) ORDER DIRECTING THE CLERK TO ISSUE
SUMMONS AND CASE DOCUMENTS, AND
COMPLETE E-SERVICE
17) ORDER STAYING THE ACTION

18 Destiny Monique Clark seeks to proceed *in forma pauperis* with an action for judicial review of
19 the administrative decision denying an application for Social Security benefits. Pending before the
20 Court are the complaint and the motion to proceed *in forma pauperis*. For the following reasons, the
21 Court finds service of the complaint is appropriate.

22 **I. Proceeding in forma pauperis**

23 The Court may authorize the commencement of an action without prepayment of fees “by a
24 person who submits an affidavit that includes a statement of all assets such person . . . possesses [and]
25 that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court
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27 ¹ This action was originally filed against Andrew Saul in his capacity as the Commissioner of Social Security.
28 (See Doc. 1 at 1.) The Court has substituted Kilolo Kijakazi, who has since been appointed the Acting Commissioner of Social Security, as the defendant. See Fed. R. Civ. P. 25(d).

1 reviewed the financial status affidavit (Doc. 2) and amended application (Doc. 4), and finds the
 2 requirements of 28 U.S.C. § 1915(a) are satisfied. Therefore, Plaintiff's request to proceed *in forma*
 3 *pauperis* is **GRANTED**.

4 **II. Screening Requirement**

5 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
 6 complaint and shall dismiss a complaint, or portion of the complaint, if it is "frivolous, malicious or
 7 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
 8 who is immune from such relief." 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff's claim is
 9 frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
 10 not there are judicially noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S.
 11 25, 32-33 (1992).

12 **III. Pleading Standards**

13 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
 14 pleading must include a statement affirming the court's jurisdiction, "a short and plain statement of the
 15 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
 16 include relief in the alternative or different types of relief." Fed. R. Civ. P. 8(a). The purpose of the
 17 complaint is to give the defendant fair notice of the claims, and the grounds upon which the complaint
 18 stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

19 Rule 8 does not require detailed factual allegations, but it demands more than an
 20 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
 21 labels and conclusions or a formulaic recitation of the elements of a cause of action will
 not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
 factual enhancement.

22 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
 23 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
 24 268 (9th Cir. 1982). The Court clarified further,

25 [A] complaint must contain sufficient factual matter, accepted as true, to "state a claim
 26 to relief that is plausible on its face." [Citation]. A claim has facial plausibility when
 27 the plaintiff pleads factual content that allows the court to draw the reasonable
 28 inference that the defendant is liable for the misconduct alleged. [Citation]. The
 plausibility standard is not akin to a "probability requirement," but it asks for more than
 a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint

pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”

Iqbal, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

IV. Discussion and Analysis

Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability benefits. (Doc. 1.) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

Any individual, after any final decision of the Commissioner made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of such decision or within such further time as the Commissioner may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business . . . The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.

Id. Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). The regulations “operate as a statute of limitations setting the time period in which a claimant may appeal a final decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at * 4-5 (E.D. Cal. Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Matthews v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976)).

Plaintiff alleges the Appeals Council responded to a request for review of the decision denying benefits on October 22, 2020, at which time the decision of the administrative law judge became the final decision of the Commissioner. (Doc. 1 at 1.) Plaintiff was granted an extension of time to file a civil action on June 3 2021. (*Id.* at 2.) Plaintiff reports the civil action was due thirty-five days from the date of service of that notice, or no later than July 8, 2021. (*See id.*) Because Plaintiff initiated this action by filing a complaint prior to that date, the request for judicial review was timely under 42 U.S.C. § 405(g).

1 **V. Conclusion and Order**

2 Plaintiff's complaint states a cognizable claim for review of the administrative decision denying
3 Social Security benefits. Based upon the foregoing, the Court **ORDERS**:

- 4 1. Plaintiff's motions to proceed *in forma pauperis* (Doc. 2, 4) are **GRANTED**;
- 5 2. The Clerk of Court is **DIRECTED** to issue summons as to Kilolo Kijakazi, the Acting
6 Commissioner of Social Security;
- 7 3. The Clerk of Court is **DIRECTED** to issue and serve Plaintiff with the Order regarding
8 Consent and the Consent Form; and
- 9 4. The Clerk of Court **SHALL** deliver to the Commissioner of Social Security
10 Administration and the United States Attorney's Office at their designated email addresses a notice of
11 electronic filing of the action along with the summons and complaint. The Commissioner has agreed
12 not to raise a defense of insufficient service of process if provided with notice of a complaint as
13 detailed in this order.
- 14 5. After service, the matter will remain **STAYED** pursuant to General Order 615, until the
15 administrative record is filed or further order of the Court lifting the stay.

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17 IT IS SO ORDERED.

18 Dated: July 23, 2021

19 /s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE